

**METROPOLITAN GOVERNMENT OF NASHVILLE  
AND DAVIDSON COUNTY EMPLOYEES  
DEFERRED COMPENSATION PLAN**

## **TABLE OF CONTENTS**

	<b>PAGE</b>
ARTICLE 1: ESTABLISHMENT AND PURPOSE OF PLAN	2
ARTICLE 2: DEFINITIONS	2
ARTICLE 3: PATICIPATION IN THE PLAN	5
ARTICLE 4: LIMITATIONS ON DEFERRAL	6
ARTICLE 5: ACCOUNTS OF PARTICIPANTS	7
ARTICLE 6: DISTRIBUTION OF ACCOUNTS	7
ARTICLE 7: DEATH BENEFITS	9
ARTICLE 8: PLAN ADMINISTRATION	9
ARTICLE 9: TRUST FUND	11
ARTICLE 10: DOMESTIC RELATIONS ORDERS	11
ARTICLE 11: MISCELLANEOUS	12

**METROPOLITAN GOVERNMENT OF NASHVILLE  
AND DAVIDSON COUNTY EMPLOYEES  
DEFERRED COMPENSATION PLAN**

**ARTICLE 1: ESTABLISHMENT AND PURPOSE OF PLAN**

(a) The Metropolitan Government of Nashville and Davidson County, Tennessee, and the Metropolitan Employee Benefit Board hereby amend and restate the Metropolitan Government of Nashville and Davidson County Employees Deferred Compensation Plan (the “Plan”) effective February 6, 2001. The Plan shall be maintained for the exclusive benefit of covered employees and is intended to comply with the eligible deferred compensation plan requirements under section 457 of the Internal Revenue Code of 1986, as amended, and regulations thereunder, and other applicable law. Assets and income of the Plan shall be held in trust for the exclusive benefit of the Plan’s Participants and the Beneficiaries.

(b) The purpose of this plan is to enable employees who become covered under the Plan to enhance their retirement security by permitting them to enter into agreements with the Employer to defer a portion of their pay and receive benefits at retirement, separation from service, death, or in the event of financial hardship due to unforeseeable emergencies.

(c) Nothing contained in the Plan shall be deemed to constitute an employment agreement between the Participant and the Employer and nothing contained herein shall be deemed to give a Participant any right to be retained in the employ of the Employer. Nothing in the Plan shall be construed to codify the terms of any employment agreement between a Participant and the Employer, the Plan being intended as a supplement thereto.

**ARTICLE 2: DEFINITIONS**

Whenever used in this Plan, the following terms shall have the meanings as set forth in this Article 2 unless a different meaning is clearly required by context:

(a) Account means the individual bookkeeping account maintained for each Participant that represents his total proportionate interest in the Trust Fund. A Participant is fully vested in his Account at all times.

(b) Administrator. The person or entity appointed by the Board to administer the Plan in accordance with Article 8.

(c) Beneficiary means the person, persons, or legal entity entitled to receive benefits under this Plan which become payable in the event of the Participant's death.

(d) Board means the Employee Benefit Board of the Metropolitan Government of Nashville and Davidson County.

(e) Code means the Internal Revenue Code of 1986, as amended, and includes any regulation thereunder.

(f) Compensation means all salary and other compensation paid to an Employee for personal services rendered by an Employee, which is currently includible in the Employee's gross income for the taxable year for federal income tax purposes (W-2 earnings); such term does not include any amount excludible from gross income under this Plan or any other plan described in section 457(b) of the Code, any amount excludible from gross income under section 403(b) of the Code, or any other amount excludible from gross income for federal income tax purposes.

(g) Deferral means the annual amount that a Participant elects to defer pursuant to a properly executed Deferral Agreement.

(h) Deferral Agreement means the agreement between a Participant and the Employer to defer receipt of pay not yet earned. The agreement shall state the annual Deferral amount to be withheld from a Participant's pay.

(i) Employee means any employee, officer, or elected or appointed official of the Employer that is eligible to participate in the Metropolitan Employee Benefit System or any former plan administered by the Metropolitan Employee Benefit Board.

(j) Employer means the Metropolitan Government of Nashville and Davidson County, Tennessee.

(k) Investment Option means one of the investment vehicles in which amounts contributed to a Participant's Account may be invested at the Participant's discretion. There is no limit on the type of investment that the Board may designate as an option.

(l) Normal Retirement Age means age 70 1/2 or other earlier age elected by the Participant in writing. In no event shall a Participant's Normal Retirement Age be earlier than the age at which the Participant has the right to retire and receive an immediate pension without reduction for early retirement.

(m) Participant means an Employee or former Employee who has been enrolled in this Plan and who retains his Account under the Plan.

(n) Plan means the Metropolitan Government of Nashville and Davidson County Employees Deferred Compensation Plan as set forth herein and as it may be amended from time to time.

(o) Plan Service Provider means the vendor hired to provide recordkeeping, trust, education, performance reporting and other services at the direction of the Administrator.

(o) Plan Year means the calendar year.

(p) Separation from Service means the severance of a Participant's employment with the Employer for any reason, including retirement, death or any other reason within the meaning of separation of service as used in Treasury Regulation § 1.457-2(h)(2).

(q) Transfer Amounts means amounts transferred to a Participant's Account in accordance with Article 3, paragraph (f).

(r) Trust Agreement means an agreement entered into by the Board and one or more Trustees to govern the Trust Fund. The Trust Agreement shall be established pursuant to a written agreement that constitutes a valid trust under the law of the State of Tennessee.

(s) Trust Fund means the sum of the contributions made to the Plan and held be the Trustee or Trustees in a trust, increased by any profits or income thereon and decreased by any losses or expenses incurred in the administration of the Trust Fund and any payment made therefrom.

(t) Trustee means the entity, or individual, or committee that is responsible for holding and managing the Trust Fund.

(u) Unforeseeable Emergency means a severe financial hardship to the Participant resulting from sudden and unexpected illness or accident of the Participant or of a dependent of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The need to send a Participant's child to college or the desire to purchase a home shall not be an Unforeseeable Emergency. Payment may not be made in the event that such hardship is or may be relieved:

(1) Through reimbursement or compensation by insurance or otherwise,

(2) By liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or

- (2) By cessation of Deferrals under the Plan.

### **ARTICLE 3: PARTICIPATION IN THE PLAN**

(a) Eligibility. Each Employee may become a Participant in this Plan following commencement of employment as an eligible Employee. Participation shall commence when enrollment becomes effective pursuant to paragraph (b).

(b) Enrollment. Employees may enroll in the Plan by completing a Deferral Agreement and submitting it to the Employer under rules and procedures established by the Board. The Employer shall be responsible for submitting the Deferral Agreement to the Administrator and ensuring that contributions are forwarded to the Trustee selected by the Board. The Board may establish additional or alternative enrollment methods such as online enrollment.

(c) Modifications to Amount Deferred. A Participant may change Deferrals with respect to pay not yet earned by submitting a new properly executed Deferral Agreement to the Employer pursuant to rules and procedures established by the Board. The Board may establish additional or alternative procedures for participants to modify the deferral amount.

(d) Revocation of Deferral. Any Participant may revoke his election to have pay deferred by notifying the Employer in writing. This revocation shall take effect as soon as administratively practicable, but no earlier than the first pay period following the date that the Employee receives written notice of such revocation. Deferrals shall be revoked automatically for any month in which there are insufficient monies to make the entire Deferral agreed upon, and automatically reinstated in the next pay period that Compensation is sufficient to make the agreed upon Deferral.

(e) Transmittal of Contributions. Notwithstanding any contrary provision of the Plan, in accordance with section 457(g) of the Code, all Deferrals, all property and rights purchased with such Deferrals and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Participants and Beneficiaries under the Plan. All amounts of compensation deferred under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Accounts of Participants.

(f) Acceptance of Transfers. A Participant who participated in any eligible deferred compensation plan described in section 457(b) of the Code may transfer his account in such a plan to his Account in this Plan.

(g) Minimum Deferral. Each Employee who becomes a Participant must agree to a minimum Deferral of \$240.00 per year.

#### **ARTICLE 4: LIMITATIONS ON DEFERRAL**

(a) General Limitation. The maximum Deferral amount for any Participant in any taxable year shall not exceed the lesser of:

(1) \$8,500 (as adjusted for the calendar year to reflect increases in the cost of living in accordance with sections 457(e)(15) and 415(d) of the Code); or

(2) 33 1/3% of the Participant's compensation for the taxable year.

(b) Catch-up Limitation. For each of the last three taxable years ending before a Participant's attainment of Normal Retirement Age, the Participant's maximum Deferral amount shall be the lesser of:

(1) \$15,000, or

(2) the sum of:

(A) the primary limitation amount determined under Article 4, paragraph (a) for the year, and

(B) that portion of the primary limitation amount not utilized by the Participant in prior taxable years (beginning after 1978) in which the Participant was eligible to participate in the Plan.

A Participant may use a prior year only if the Deferral under the Plan in existence during that year were subject to a ceiling on Deferrals. The catch-up limitation is available to a Participant during one three-year period only. If the Participant uses the catch-up limitation and then postpones retirement or returns to work after retirement, the catch-up limitation shall not be available again.

(c) Coordination with Other Plans. If a Participant participates in more than one Code section 457 plan, the maximum deferral under all such plans shall not exceed \$7,500, as adjusted. If a Participant participates in a plan described in sections 401(k), 403(b), 408(p), or 501(c)(18) of the Code, amounts deferred by the Participant to such plan or plans and excluded from his gross income in any taxable year under such plan(s) shall reduce the general limitation amount.

(d) The provisions of this Article 4 shall be administered in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994.

## **ARTICLE 5: ACCOUNTS OF PARTICIPANTS**

(a) Accounts. The Administrator shall establish and maintain Accounts on behalf of each Participant. Such Participant Accounts shall be valued each business day. Each participant's Account balance shall reflect his aggregate Deferral amounts, Transfer Amounts and any earning (or losses) attributable to such amounts, and shall be reduced by administrative, investment, and other fees attributable to his Account that are necessary for the administration of the Participant's Account.

(b) Investments. A participant may request that his Account (and his Deferrals) be allocated among the Investment Options available to the participant. The initial allocation request shall be made at the time of enrollment. Once made, an investment allocation request shall remain in effect until changed by the Participant. A Participant may change his investment allocation by submitting a request to the Administrator in such manner as is approved by the Board. Such changes shall become effective as soon as administratively feasible after the Administrator receives such request. If the Participant fails to make an investment allocation request at the time of his enrollment or upon the discontinuation of an investment vehicle, the Participant's Account shall be invested in default Investment Options selected by the Board, until such time as the Participant submits an investment allocation request.

## **ARTICLE 6: DISTRIBUTION OF ACCOUNTS**

(a) Eligibility for Payment. Distribution to a Participant of his Account shall be made no earlier than:

(1) Separation from Service,

(2) The calendar year in which the Participant attains age 70½, or

(3) The date the Administrator approves a distribution to the Participant on account of an Unforeseeable Emergency.

(b) Distribution Due to Unforeseeable Emergency. A Participant may request a distribution due to Unforeseeable Emergency by submitting a written request to the Administrator accompanied by evidence to demonstrate that his situation qualifies as an Unforeseeable Emergency. The Administrator shall have the authority to require such evidence as it deems necessary to determine whether a distribution is warranted. If an



application for a distribution due to an Unforeseeable Emergency is approved, the distribution is limited to an amount sufficient to meet the Unforeseeable Emergency. The allowed distribution shall be paid in a single sum to the Participant as soon as possible after approval of such distribution.

(c) Commencement of Distributions.

(1) General Rule. Distribution of a Participant's Account under the Plan shall be made in a single sum as soon as administratively feasible after the Participant's Separation from Service occurs, unless the Participant makes a one-time irrevocable written election to defer this payment to a specified later date, and the election is made at least 30 days before the date benefits commence. A Participant may elect that the distribution of benefits be made on any determinable future date as long as distributions commence no later than 60 days following the close of the calendar year in which the Participant attains age 70½, or retires, if later. A Participant may elect periodic distributions provided that any such distributions payable over more than one year are made in substantially nonincreasing amounts and paid not less than annually as provided in Code section 457(d)(2)(C).

(2) Effective January 1, 2000, if a Participant has elected a deferred commencement date, the Participant may make an additional election to defer the payment of his Account, provided that the election is filed before the payment is made and the later commencement date meets the required distribution commencement date provisions of sections 401(a)(9) and 457(d)(2) of the Code. A Participant may not make more than one such additional deferral election.

(3) Notwithstanding paragraphs (c)(1) and (c)(2), effective January 1, 2000, if the value of a Participant's Account is \$5,000 or less, then his benefit under the Plan shall be distributed to him in a single sum as soon as administratively feasible following his Separation from Service.

(d) Plan-to-Plan Transfers. Notwithstanding any other provisions of the Plan, all of any part of the Account of a former Employee who is a Participant in the Plan, instead of being distributed in accordance with paragraph (c), shall be transferred to another eligible deferred compensation plan in which the former Employee has become a participant, if:

(1) The plan receiving such amounts provides for acceptance of such transfers; and

(2) The Participant gives written direction to the Administrator to make such transfer.

This Plan also shall accept the transfer of amounts previously deferred by a Participant under another eligible deferred compensation plan described in section 457 of the Code.

(e) All distributions under this Article 6 shall be made in accordance with the requirements of Code section 457(d)(2).

## **ARTICLE 7: DEATH BENEFITS**

(a) Death Benefit. As soon as administratively feasible following the death of a Participant, the Participant's Beneficiary shall receive a single-sum distribution of the Participant's entire Account balance.

(b) Beneficiary Designation. A Participant shall have the right to designate a Beneficiary, and amend or revoke such designation at any time, in writing. Such designation, amendment or revocation shall be effective upon receipt by the administrator.

(c) Failure to Designate a Beneficiary. If no designated Beneficiary survives the Participant, and benefits are payable following the Participant's death, the Administrator shall direct that payment of benefits be made to the person or persons in the first of the following classes of successive preference Beneficiaries:

(1) Any class of contingent Beneficiaries designated by the Participant; and

(2) The Participant's estate.

(d) All death benefits paid in accordance with this Article 7 shall be made in accordance with the requirements of Code section 457(d)(2).

## **ARTICLE 8: PLAN ADMINISTRATION**

(a) Plan Administration. The Board shall retain ultimate authority and responsibility for the administration and interpretation of the Plan but it shall be administered on a day to day basis by the party selected as and designated "Administrator" by the Board. Upon the resignation or removal of an Administrator, the Board shall thereafter promptly appoint a successor Administrator.

The Administrator shall have the full power and authority, subject to approval by the Board, to adopt forms, rules and regulations for the administration of the Plan, provided they are not inconsistent with the provisions of the Plan. The Administrator shall, in accordance with such rules and regulations, be authorized and empowered to act to:

(1) Answer all questions about any provision of the Plan.

(2) Determine whether requirements such as age, termination of employment or Unforeseeable Emergencies as may be required for the receipt of any distribution under the Plan are satisfied.

(3) Request that the Board take such action as may be required from time to time, including amendments to the Plan to protect any favorable tax status of the Plan, as applicable to a Participant, any Beneficiary and the Employer.

(4) Process changes in amounts of the Participant's Deferrals, and Participant investment allocation requests.

Neither the Administrator nor the Employer nor the Board has any authority or duty under the Plan to question or advise any Employee or Participant under the Plan concerning his enrollment in the Plan, his selection of any Investment Options, or his request for a distribution or withdrawal under the Plan.

(b) Amendment of Plan. The Board shall have the right to amend the Plan, at any time and from time to time, in whole or in part.

(c) To implement the Plan, the Board shall enter into a Trust Agreement, so that Plan funds shall be segregated from the Employer's own assets and held in trust by the Trustee for the exclusive benefit of Participants and their Beneficiaries. Any or all benefits that may accrue to any Participant or Beneficiary under this Plan shall be subject to the terms and conditions of said Trust Agreement. Except as provided in paragraph (d), it shall be impossible under any circumstances at any time for any part of the corpus or income of the Trust Fund to be use for, or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

(d) Plan Expenses. All expenses of Plan administration, including (by way of illustration and not limitation) those incurred by the Board and the fees of the Trustee shall be paid from the Trust Fund.

(e) Claims for Benefits. If the Administrator denies a claim for a benefit under this Plan, such claim shall be reviewed by the Board (or by its designee) in accordance with the procedures adopted by the Board.

(f) Investment Options: The Board shall select the Investment Options available to Participants under the Plan and shall review at least annually the quality and performance of such Investment Options. The Board shall have the authority to modify the Investment Options and shall proscribe default Investment Options for any participant that fails to specify an investment allocation upon enrollment in the Plan or upon termination of an Investment Option.

## **ARTICLE 9: TRUST FUND**

Notwithstanding any contrary provision of the Plan, in accordance with section 457(g) of the Internal Revenue Code, all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of participants and beneficiaries under the Plan. Any trust under the Plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of Tennessee.

All amounts of compensation deferred under the Plan shall be transferred to a trust established under the Plan within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, all amounts of compensation deferred under the Plan shall be transferred to a trust established under the Plan not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

## **ARTICLE 10: DOMESTIC RELATIONS ORDERS**

(a) The Plan shall comply with the orders of a court of competent jurisdiction for the division of a participant's account provided such order contains the following provisions:

(1) The order must state that it relates to the provision of support, alimony or marital property rights to a spouse or former spouse of a participant and is made pursuant to state domestic relations law.

(2) The order must clearly and unambiguously refer to the Metropolitan Government of Nashville and Davidson County Employees Deferred Compensation Plan.

(3) The order must contain the name of the participant's employer.

(4) The order must contain the name, mailing address and taxpayer identification number of both the participant and the alternate payee.

(5) The order must state the amount or percentage, or the manner in which the amount or percentage is to be determined, of the participant's account to be paid to the alternate payee or segregated from the participant's account. The amount or percentage to be paid or segregated must be calculable according to the Administrator's currently available records.

(6) Any segregate account of an alternate payee shall bear all fees and expenses as though the alternate payee were a participant.

(7) Any distribution to an alternate payee becomes payable only after the participant's death or separation of service and only upon the alternate payee's written claim to the Administrator.

(8) The order must state that it does not require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan.

(9) The order must state it does not require the Plan to provide increased deferred compensation.

(10) Any provision that would have the effect of requiring any distribution to an alternate payee of deferred compensation required to be paid to another person under any court order is void.

(11) The order shall have no effect concerning any party's tax treatment of any amounts deferred or distributed under the Plan and shall not direct any person's tax reporting or withholding.

(b) The Administrator shall have the authority, subject to approval by the Board, to establish policies and procedures for the administration of domestic relations orders.

(c) Any fees incurred by the Plan for the administration of domestic relations orders shall be charged equally against the accounts of the participant and alternative payee.

## **ARTICLE 11: MISCELLANEAOUS**

(a) Limitation of Rights: Employment relationship. Neither the establishment of this Plan nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving a Participant or any other person any legal or equitable right against the Employer except as provided in the Plan. In no event shall the terms of employment of any Employee be modified or in any way be affected by the Plan.

(b) Benefits under this Plan may not be assigned, sold, transferred, or encumbered, and any attempt to do so shall be void. A Participant's or Beneficiary's Account shall not be subject to debts or liabilities of any kind and shall not be subject to attachment, garnishment or other legal process.

(c) Representations. The Board does not represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will result from participation in this Plan. A Participant should consult with professional tax advisors to determine the tax consequences of his participation. Furthermore, the

Board does not represent or guarantee successful investment of deferrals and shall not be required to restore any loss which may result from such investment.

(d) Severability. If a court of competent jurisdiction holds any provision of this Plan to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

(e) The provisions of this Plan shall be construed in accordance with section 457 of the Code, all other applicable federal law, and to the extent such other statutes do not apply, the laws of the State of Tennessee.

**METROPOLITAN GOVERNMENT  
OF NASHVILLE AND DAVIDSON  
COUNTY, TENNESSEE**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

I certify that this amended and restated Plan Document was adopted by a majority vote of the Employee Benefit Board of the Metropolitan Government of Nashville and Davidson County on the \_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Chairman of the Metropolitan Employee  
Benefit Board